

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	June 19, 2018	[X] Consent	[] Regular
		[] Ordinance	[] Public Hearing

Department: **Department of Housing and Economic Sustainability**

I. EXECUTIVE BRIEF

Motion and Title: **Staff recommends motion to Receive and File:** the following documents:

- A) Certificate of Award for Developer Affordable For-Sale Housing Units to Neighborhood Renaissance, Inc., under the Impact Fee Affordable Housing Assistance Program (IFAHAP); and**
- B) Certificate of Award for Developer Affordable Rental Housing Units to BDG Banyan Court, LP, under IFAHAP.**

Summary: In accordance with County PPM CW-0-051, all delegated contracts, agreements and grants must be submitted by the initiating Department as a receive and file agenda item. The attached documents have been executed on behalf of the Board of County Commissioners (BCC) by the Mayor in accordance with Agenda Items 5B-6 and 4B-3 as approved by the BCC on September 12, 2017, and December 5, 2017, respectively. The Certificate of Award for Developer Affordable For-Sale Housing Units awarded \$13,890.85 in IFAHAP funds as a reimbursement of impact fees associated with the construction of eight (8) townhouses. The Certificate of Award for Developer Affordable Rental Housing Units awarded \$14,495.90 in IFAHAP funds as a reduction of impact fees associated with the construction of 85 apartments. These executed documents are now being submitted to the BCC to receive and file. **IFAHAP funds are from interest earned by the Impact Fee Fund.** District 3 (JB)

Background and Justification: **A)** On September 12, 2017, Neighborhood Renaissance, Inc., was awarded \$13,890.85 by means of a Certificate of Award for Developer Affordable For-Sale Housing Units under IFAHAP. The award provides a reimbursement of impact fees associated with the construction of eight (8) affordable townhouses to be constructed at Lucerne Avenue and North F Street in Lake Worth. IFAHAP requires that these units be sold to households with incomes at no more than 140% of Area Median Income (AMI).

B) On December 5, 2017, BDG Banyan Court, LP, was awarded \$14,495.90 by means of a Certificate of Award for Developer Affordable Rental Housing Units under IFAHAP. The award provides a reduction of impact fees associated with the construction of 85 affordable rental units to be constructed at 1716 3rd Avenue North in Lake Worth. IFAHAP requires that these units be rented to households with incomes at no more than 140% of AMI.

Attachment(s):

- 1. Certificate of Award for Developer Affordable For-Sale Housing Units to Neighborhood Renaissance, Inc.
- 2. Certificate of Award for Developer Affordable Rental Housing Units to BDG Banyan Court, LP

Recommended By: Jonathan Brown
Department Director

5/22/18
Date

Approved By: Naure Johnson
Assistant County Administrator

6/6/18
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT					

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes X No
Does this Item include the use of Federal funds? Yes No X

Fund Dept Unit Object Program Code/Period

B. Recommended Sources of Funds/Summary of Fiscal Impact:

No fiscal impact

C. Departmental Fiscal Review: Shairette Major
Shairette Major, Fiscal Manager II

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

Lisa Pontes 5/24/18 6/4/18
OFMB 8/24 6/24/23 Contract Development and Control
6/4/18

B. Legal Sufficiency:

Anne Bruhn 6/5/18
Assistant County Attorney

C. Other Department Review:

Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

PALM BEACH COUNTY
IMPACT FEE AFFORDABLE HOUSING ASSISTANCE PROGRAM

CERTIFICATE OF AWARD
FOR DEVELOPER AFFORDABLE FOR-SALE HOUSING UNITS

This Certificate is awarded on MAY 03 2018, by **PALM BEACH COUNTY**, a political subdivision of the State of Florida (the "County") to **NEIGHBORHOOD RENAISSANCE, INC.**, a Florida not-for-profit corporation, whose Federal I.D. number is 65-0352279 (the "Developer"). This Certificate is awarded pursuant to funding approval by the Palm Beach County Board of County Commissioners on September 26, 2017, at which time authority was delegated to the Mayor to execute this Certificate.

The Developer may present this Certificate to the Palm Beach County Impact Fee Coordinator under the Impact Fee Affordable Housing Assistance Program (the "IFAHAP") to receive a credit of \$813.25 towards the payment of Public Buildings Impact Fees, a credit of \$2,556.16 towards the payment of Zone 2 Park Impact Fees, and a credit of \$10,521.44 towards the payment of Zone 2 Road Impact Fees associated with the construction of eight (8) affordable for-sale housing units in a housing development to be known as Art Lofts at West Village.

In exchange for the acceptance of this Certificate and the receipt of the aforementioned credits from the County towards the payment of impact fees associated with Art Lofts at West Village, the Developer expressly agrees to comply with, and to perform, all of the terms contained in the below enumerated Conditions of Issuance.

Furthermore, in exchange for the receipt of the aforementioned credit from the County towards the payment of impact fees associated with Art Lofts at West Village, the Developer also agrees to execute and deliver to the County a Declaration of Restrictions for Developer Affordable For-Sale Housing Units, attached hereto and made a part hereof, and to comply with the terms contained therein.

This Certificate, if not used for the purposes set forth herein, shall expire one (1) year from the date of funding approval for the Art Lofts at West Village project by the Palm Beach County Board of County Commissioners, that is, on September 26, 2018.

PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

By: Melissa McKinlay
Melissa McKinlay, Mayor

Approved as to Form and
Legal Sufficiency

By: James Brako
James Brako
Assistant County Attorney

Approved as to Terms and Conditions
Dept. of Housing and Economic Sustainability

By: Sherry Howard
Sherry Howard, Deputy Director

CONDITIONS OF ISSUANCE

1. Organization Status: Developer is a Florida not-for-profit corporation duly organized and validly existing in good standing under the laws of the State of Florida with full power and authority to consummate the transactions contemplated herein.

2. Housing To Be Constructed: At the time of issuance of this Certificate to the Developer, the Developer has represented to the County that the Developer owns that certain real property (hereinafter "Property") located in Palm Beach County, Florida, as more particularly described in Attachment 1 to Exhibit A, attached hereto and made a part hereof. The Developer shall construct no fewer than eight (8) for-sale housing units on the Property, together with ancillary improvements, all of which shall be known as Art Lofts at West Village (hereinafter "Project"). All aforesaid for-sale housing units shall be "Affordable For-Sale Housing Units" affected by these Conditions of Issuance and the Declaration of Restrictions referenced herein. Each of the aforesaid Affordable For-Sale Housing Units shall be the unit owner's principal place of residence. None of the Affordable For-Sale Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.

3. Declaration of Restrictions: As a prerequisite to the Developer's receipt of the herein described credit towards the payment of impact fees for the Project, the Developer shall have provided the County with a copy of the Developer's non-discrimination policy or a signed statement as required by Section 12 herein.

The Developer shall, in exchange for the receipt of this Certificate deliver to the County a fully executed Declaration of Restrictions for Developer Affordable For-Sale Housing Units, attached hereto and made a part hereof, as Exhibit A, and shall comply with the terms contained therein.

4. Building Permits: Developer shall obtain all building permits for the construction of the Project from the building department with jurisdiction over the Project within one (1) year after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, no later than September 26, 2018.

5. Certificates of Occupancy: Developer shall obtain certificates of occupancy from the building department with jurisdiction over the Project for all Affordable For-Sale Housing Units at the Project and sell all such units within four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, no later than September 26, 2021.

6. Affordability of For-Sale Housing Units: Developer shall sell each of the aforesaid eight (8) Affordable For-Sale Housing Units to a household whose gross income, adjusted for family size, is no more than one hundred and forty percent (140%) of Area Median Income (hereinafter "AMI") at the time of sale. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.

Each Affordable For-Sale Housing Unit shall, at the time of sale, be affordable to the purchaser such that the purchaser's total cost of the mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees, calculated on a monthly basis, does not exceed thirty five percent (35%) of the gross monthly household income of the purchaser.

7. Deed Restrictions for Developer Affordable For-Sale Housing Unit: Developer shall place the deed restrictions shown in the Declaration in the deed of each Affordable For-Sale Housing Unit

8. Records to be Maintained by Developer: Developer shall, for each purchaser of an Affordable For-Sale Housing Units at the Project, maintain a file that, at a minimum, contains the following:

- An application-for-purchase, signed and dated by the prospective purchaser, identifying the household members that intend to occupy the unit and their household characteristics, and the household income they have disclosed.
- A contract for purchase and sale for each purchaser.
- Documentation evidencing the Developer's verification of the prospective purchaser's household income and a computation sheet demonstrating the Developer's determination of the prospective purchaser's income eligibility to occupy the unit. Household income computation shall follow the HUD Section 8 method (24 CFR 5.609).
- A copy of the AMI showing the HUD income levels in effect at the time the unit is sold.
- Documentation evidencing the Developer's verification of the prospective purchaser's mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees.
- A computation sheet demonstrating that the purchaser's total cost of the mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees, calculated on a monthly basis, does not exceed thirty five percent (35%) of the gross monthly household income of the purchaser at the time of sale.
- Original closing documents for each sale.
- Should the Developer elect to utilize criminal background information in the screening of purchasers, the Developer must develop and implement purchaser selection policies which comply with HUD guidance on the use of criminal background information.

Purchaser selection shall not:

- (i) Exclude persons from housing based on records of arrests not resulting in conviction;
- (ii) Exclude persons from housing based solely on conviction of any type, with the exception of those identified by HUD (methamphetamine production and registered sex offender); and
- (iii) Be utilized to intentionally discriminate against protected classes of persons.

Purchaser selection shall:

- (i) Serve a substantial, legitimate, and non-discriminatory interest of the housing provider;
- (ii) Distinguish between criminal conduct which indicates a demonstrable risk to resident safety and/or property and that which does not;
- (iii) Consider the nature, severity, and recency of the criminal offense;
- (iv) Consider relevant individualized evidence such as: circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; and rehabilitation efforts; and
- (v) Be applied equally among all classes of protected persons.

- Any other documentation evidencing the Developer's compliance with these Conditions of Issuance and the requirements of the Declaration of Restrictions for Developer Affordable For-Sale Housing Units.

9. Right to Audit and Access to Records: Developer shall maintain ongoing records related to each purchaser/tenant at the Project, and shall maintain all purchaser/tenant records for at least five (5) years after the date of sale or the end of each tenancy. The County shall have the option, but not the obligation, to verify the Developer's compliance with these Conditions of Issuance and the requirements of the Declaration of Restrictions for Developer Affordable For-Sale Housing Units. The County may, at its sole discretion, inspect or audit all tenant and owner records, and the Developer shall provide the County access to such books, records, and documents as required in this Section for the purpose of inspection or audit during normal business hours at the Developer's place of business.

Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Developer, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

10. Public Records: Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Developer: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Developer shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Developer is specifically required to:

- Keep and maintain public records required by the County to perform services as provided in this Certificate.
- Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Developer further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if the Developer does not transfer the records to the public agency.
- Upon completion of the requirements set forth in this Certificate the Developer shall transfer, at no cost to the County, all public records in possession of the Developer unless notified by the County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Developer transfers all public records to the County upon completion of the requirements set forth in this Certificate, the Developer shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Developer keeps and maintains public records upon completion of the requirements set forth in this Certificate, the Developer shall meet all applicable requirements for retaining public records. All records stored electronically by the Developer must be provided to the County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County, at no cost to the County.

Failure of the Developer to comply with the requirements of this article shall be a material breach of this Certificate. The County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. The Developer acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CERTIFICATE, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 NORTH OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT (561) 355-6680.

11. Certification and Reporting Requirements: Developer shall within thirty (30) days of each anniversary date of the Declaration of Restrictions for Developer Affordable For-Sale Housing Units, provide the County an annual report in the form of an affidavit executed by a person authorized to bind the Developer. Each such affidavit shall contain the following:

- A certification that the Developer is in compliance with the requirements of the Declaration of Restrictions for Developer Affordable For-Sale Housing Units and the Certificate for the Project.
- Evidence of having obtained all building permits for the project from the building department with jurisdiction over the Project within one (1) year after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners. (The Developer may discontinue submission of these items after this requirement has been met.)
- Evidence of having completed construction of all Affordable For-Sale Housing Units at the Project and obtained their certificates of occupancy from the building department with jurisdiction over the Project and evidence that all such units have been initially occupied by households as specified herein within four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners. (The Developer may discontinue submission of these items after this requirement has been met.)
- A certification listing all Affordable For-Sale Housing Units at the Project that have been sold. This certification shall for each such unit include the address, the purchaser's annual household income, the number of unit occupants, and the purchaser's mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees, provided on a monthly basis as established on the date of sale. (The Developer may discontinue submission of this information after all Affordable For-Sale Housing Units have been initially sold.)

Developer shall submit the Annual Report to:

Department of Housing and Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

12. Non-Discrimination: The Developer warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

Furthermore, Developer shall not discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property, nor shall any person on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of the terms contained herein.

13. Exclusion of Third Party Beneficiaries: No provision herein is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party named herein, including but not limited to any citizen or employees of the County and/or the Developer.

14. Advertising: During the period of the construction of the Project, the County shall have the right to install and maintain on the Property one or more signs identifying the County, or to be identified on such signs installed by others, as one of the entities participating in the development of the project. Sign or signs will be provided by the County and erected at Developer's expense.

15. Governing Law: The laws of the State of Florida shall govern the interpretation and enforcement of the terms contained herein and the venue shall be in Palm Beach County.

EXHIBIT A

Return to:

Palm Beach County
Department of Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, Florida 33406
Prepared by: James Brako,
Assistant County Attorney

DECLARATION OF RESTRICTIONS FOR DEVELOPER AFFORDABLE FOR-SALE HOUSING UNITS

The undersigned, **Neighborhood Renaissance, Inc.**, having its principal office at 510 24th Street, Suite A, West Palm Beach, FL 33407, (hereinafter referred to as "Declarant", which term as used in every instance herein shall include Declarant's successors and assigns), for the property described below, in consideration for the receipt of a Certificate of Award for Developer Affordable For-Sale Housing Units (the "Certificate"), dated _____, 20____, under Palm Beach County's Impact Fee Affordable Housing Assistance Program (hereinafter referred to as "IFAHAP") and the receipt of a credit valued at Thirteen Thousand Eight Hundred Ninety and 85/100 Dollars (\$13,890.85) towards the payment of road, park, and public buildings impact fees as provided by Palm Beach County a political subdivision of the State of Florida (the "County"), does hereby grant to the County the following restrictions against the subject property, hereinafter referred to as the Property, which is more fully described in Attachment 1 attached hereto and made a part hereof.

1. The restrictions contained in this Declaration of Restrictions for Developer Affordable For-Sale Housing Units (the "Declaration") shall be deemed a covenant running with the land and are binding upon the undersigned, their heirs, executors, successors, and assigns. These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and/or those persons to whom such authority is formally delegated, and executed with the same formalities as this document.

2. In consideration for the receipt of the Certificate and its associated credit of \$13,890.85 towards the payment of Public Buildings Impact Fees, Zone 2 Park Impact Fees, and Zone 2 Road Impact Fees, the Declarant hereby covenants and agrees as follows:

- (a) To comply with the Conditions of Issuance contained in the Certificate referenced herein.
- (b) To construct no fewer than **eight (8)** for-sale housing units on the Property, together with ancillary improvements, all of which shall be known as Art Lofts at West Village (the "Project"). All aforesaid for-sale housing units shall be "Affordable For-Sale Housing Units" affected by the restrictions and conditions of this Declaration, and by those contained in the Certificate referenced herein. Each of the aforesaid Affordable For-Sale Housing Units shall be unit owner's principal place of residence. None of the Affordable For-Sale Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.
- (c) To obtain all building permits for the construction of the Project from the building department with jurisdiction over the Project no later than September 26, 2018.
- (d) To obtain certificates of occupancy from the building department with jurisdiction over the Project for all Affordable For-Sale Housing Units at the Project no later than September 26, 2021.

- (e) To sell, no later than September 26, 2021, all Affordable For-Sale Housing Units at the Project to households whose gross income, adjusted for family size, is no more than one hundred and forty percent (140%) of Area Median Income (hereinafter "AMI") at the time of sale. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.
- (f) To sell each Affordable For-Sale Housing Unit such that, at the time of sale, the purchaser's total cost of the mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees, calculated on a monthly basis, does not exceed thirty five percent (35%) of the gross monthly household income of the purchaser's household.
- (g) To include the following restrictions and conditions in each deed conveying each Affordable For-Sale Housing Unit:
 - i. This property shall only be sold to, and occupied by, a homeowner in accordance with the Declaration of Restrictions for Developer Affordable For-Sale Housing Units recorded in ORB ___ Page ___ of the Public Records of Palm Beach County, Florida.
 - ii. These restrictions shall be deemed a covenant running with the land described herein and are binding upon the title holder of such land for a period of fifteen (15) years from the date hereof.
 - iii. This property may only be used for residential purposes as the title holder's principal place of residence as evidenced by a local homestead exemption.
 - iv. These restrictions may not be transferred to another property and these restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and/or those persons to whom such authority is formally delegated, and executed with the same formalities as this document.
 - v. These restrictions, unless released by Palm Beach County as provided above, shall be included in every subsequent deed conveying title to this property and shall renew for a period of fifteen (15) years from the date of every such deed.
 - vi. This property may only be sold, conveyed or transferred to a successor title holder whose gross household income, at the time of sale, conveyance or transfer, adjusted for family size, is no more than one hundred and forty percent (140%) of Area Median Income as determined by the Palm Beach County Department of Economic Sustainability. Area Median Income shall be the most recent area median income published by the U. S. Department of Housing and Urban Development for the West Palm Beach-Boca Raton Metropolitan Statistical Area.
 - vii. This property may only be sold, conveyed or transferred to a successor title holder such that the successor title holder's total cost of the mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees, calculated on a monthly basis, does not exceed thirty five percent (35%) of the gross monthly household income of the successor title holder as determined by the Palm Beach County Department of Economic Sustainability.
- (h) To submit annual reports to the County as outlined in the Certificate detailing the Declarant's compliance with the terms of the Certificate and this Declaration.
- (i) To maintain its records as provided for in the Certificate.

- (j) Not to discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property.

3. Declarant has secured a loan to construct the Project in an amount up to \$1,666,000 from the Florida Community Loan Fund, or its successors (the "First Mortgage Holder"), which loan has been secured by a separate mortgage encumbering the Property (the "First Mortgage"). Declarant has also secured a loan to construct the Project in an amount up to \$700,000 from the Lake Worth Community Redevelopment Agency, or its successors (the "Second Mortgage Holder"), which loan has been secured by a separate mortgage encumbering the Property (the "Second Mortgage").

The lien created by this Declaration shall be senior to all other liens, encumbrances, and mortgages on the Property except the lien created by the First Mortgage and the Second Mortgage, and except any other liens expressly recognized by the County in writing.

4. The Declarant shall pay, or cause to be paid, all taxes due while the Property is in its possession, and the Declarant shall not voluntarily create, or permit or suffer to be created or to exist, on or against the Property, or any part of thereof, any lien superior to the lien of this Declaration except for the lien created by the First Mortgage and the Second Mortgage, and except for any other liens expressly recognized by the County in writing. The Declarant shall keep and maintain the Property free from the claims of all parties supplying labor or materials unto the same. The Declarant agrees to notify the County of any liens, judgments or pending foreclosure on the Property within five (5) working days of the receipt of said notice by Declarant.

5. Should Declarant change the use or planned use, or discontinue use, of the Property (including the beneficiaries of such use) from affordable for-sale housing, then the Declarant shall pay the County an amount equal to the IFAHAP Repayment Amount as defined herein.

6. The Declarant acknowledges and covenants that the Declarant's failure to perform any covenant, agreement, term, or condition contained herein, or in the Certificate referenced herein, shall constitute a default under this Declaration. The Declarant further acknowledges and covenants that a default under the First Mortgage, under any senior mortgage to this Declaration, or under any subordinate mortgage to this Declaration, shall constitute a default under this Declaration.

In the event of default, before the County shall pursue any of its rights or remedies under this Declaration, the County shall first give the Declarant written notice of the default complained of which such notice shall be given to the Declarant at their address shown herein. The Declarant shall then have thirty (30) calendar days from the date such notice is given to cure or correct any such default to the County's satisfaction.

If the Declarant fails, neglects, or refuses to perform any of the provisions, terms and conditions set forth herein, or in the Certificate, or fails to cure any breach of this Declaration or the Certificate within the period set forth above after the County provides notice to the Declarant as set forth above, the County may at any time thereafter, with or without notice or demand and without limiting any other right or remedy which the County may have hereunder or under the law by reason of such default or breach, declare due from Declarant immediately upon demand an amount equal to the IFAHAP Repayment Amount as defined herein.

If the Declarant shall fail to pay the above amount, the County shall have the right to file in a court of competent jurisdiction an action for collection of due and unpaid amount and penalties which the Declarant is obligated to pay hereunder.

Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Declarant of its determination that the Declarant is in default of the terms of this Declaration, and upon the Declarant's failure to cure the default to the County's satisfaction, the County may, from time to time, cure each default under any covenant so curable in this Declaration, or in any instrument creating a lien upon the Property, or any

part thereof, to such extent that the County determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Declarant to the County in addition to the legal rate of interest from the time of expenditure and shall constitute a lien against the property. The County shall provide the First Mortgage Holder thirty (30) calendar days notice before the County cures any default.

In addition to any remedy set forth herein, the County shall have such other remedies as are available at law or equity. The exercise or attempted exercise by the County of any right or remedy available under this Declaration shall not preclude the County from exercising any other right or remedy so available, nor shall any such exercise or attempted exercise constitute or be construed as an election of remedies. The Declarant shall pay any reasonable expenses, including reasonable attorney's fees and costs incurred by the County, under this Declaration and the preparation and delivery of notices required hereunder. The failure or omission by the County to enforce any of its rights or remedies upon breach of any of the covenants, terms or conditions of this Declaration shall not bar or breach any of the County's rights or remedies on any subsequent default. The County shall provide the First Mortgage Holder thirty (30) calendar days notice before the County exercises any remedy under this provision.

7. As applicable for each Affordable For-Sale Housing Unit: In the event the Declarant voluntarily withdraws from the IFAHAP prior to the sale of the Affordable For-Sale Housing Unit to a household as provided herein or in the event the Declarant is in default hereunder, then the Declarant shall pay the County the IFAHAP Repayment Amount which shall be calculated as the sum of the amount secured by this Declaration per Affordable For-Sale Housing Unit which is \$1,736.35, plus three percent (3%) of said amount per year (or partial year) commencing with the recording date of this Declaration in the Public Records of Palm Beach County, Florida, plus \$1,500.

Upon receipt of the IFAHAP Repayment Amount by the County, the County shall issue the Declarant a release of restrictions removing the lien of this Declaration from the affected Affordable For-Sale Housing Units.

For each household who has purchased an Affordable For-Sale Housing Unit from the Declarant and for subsequent households who have purchased an Affordable For-Sale Housing Unit, the IFAHAP Repayment Amount shall be \$1,736.35 per Affordable For-Sale Housing Unit and such amount shall be paid to the County in the event of the purchaser household's voluntary withdrawal from the IFAHAP or in the event of such household's default under the deed restrictions stated herein.

8. All notices from the Declarant to the County and the County to the Declarant, and as otherwise required or permitted by any provision of this Declaration shall be in writing and sent by registered or certified mail and addressed as follows:

To County: Board of County Commissioners
c/o Palm Beach County Attorney's Office
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401

To Declarant: Neighborhood Renaissance, Inc.
510 24th Street, Suite A
West Palm Beach, FL 33407

Such addresses may be changed by each party by written notice to the other parties.

THIS SPACE HAS BEEN INTENTIONALLY LEFT BLANK

9. The Declarant shall cause this Declaration to be recorded in the Public Records of Palm Beach County, Florida, and thereafter the Declarant shall deliver this Declaration to the Director of the Department of Housing and Economic Sustainability, at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.

Executed this ____ day of _____, 20__.

Signed, sealed and delivered
in the presence of:

Witnesses: **NEIGHBORHOOD RENAISSANCE, INC.,**
a Florida not-for-profit corporation

Name: _____

Signature: By: _____
Terri L. Murray, Executive Director

Corporate Seal:

Name: _____

Signature: _____

STATE OF FLORIDA
COUNTY OF PALM BAECH

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Terri L. Murray as Executive Director of Neighborhood Renaissance, Inc., who is personally known to me, or who has produced _____ as identification.

Signature: _____

(NOTARY SEAL ABOVE)

Notary Name: _____
Notary Public - State of Florida

ATTACHMENT 1
LEGAL DESCRIPTION OF THE PROPERTY

Lot A, WEST VILLAGE ARTIST LOFT, according to the plat thereof, as recorded in Plat Book 125, Page 49, of the Public Records of Palm Beach County, Florida.

Lot B, WEST VILLAGE ARTIST LOFT, according to the plat thereof, as recorded in Plat Book 125, Page 49, of the Public Records of Palm Beach County, Florida.

Lot C, WEST VILLAGE ARTIST LOFT, according to the plat thereof, as recorded in Plat Book 125, Page 49, of the Public Records of Palm Beach County, Florida.

Lot D, WEST VILLAGE ARTIST LOFT, according to the plat thereof, as recorded in Plat Book 125, Page 49, of the Public Records of Palm Beach County, Florida.

Lot E, WEST VILLAGE ARTIST LOFT, according to the plat thereof, as recorded in Plat Book 125, Page 49, of the Public Records of Palm Beach County, Florida.

Lot F, WEST VILLAGE ARTIST LOFT, according to the plat thereof, as recorded in Plat Book 125, Page 49, of the Public Records of Palm Beach County, Florida.

Lot G, WEST VILLAGE ARTIST LOFT, according to the plat thereof, as recorded in Plat Book 125, Page 49, of the Public Records of Palm Beach County, Florida.

Lot H, WEST VILLAGE ARTIST LOFT, according to the plat thereof, as recorded in Plat Book 125, Page 49, of the Public Records of Palm Beach County, Florida.

PALM BEACH COUNTY
IMPACT FEE AFFORDABLE HOUSING ASSISTANCE PROGRAM

CERTIFICATE OF AWARD
FOR DEVELOPER AFFORDABLE RENTAL HOUSING UNITS

.APR 10 2018

This Certificate is awarded on _____, by **PALM BEACH COUNTY**, a political subdivision of the State of Florida (the "County") to **BDG BANYAN COURT, LP**, a Florida Limited Partnership, whose Federal I.D. number is 38-4016449 (the "Developer"). This Certificate is awarded pursuant to funding approval by the Palm Beach County Board of County Commissioners on December 5, 2017, at which time authority was delegated to the Mayor to execute this Certificate.

The Developer may present this Certificate to the Palm Beach County Impact Fee Coordinator under the Impact Fee Affordable Housing Assistance Program (the "IFAHAP") to receive a credit of \$14,495.90 towards the payment of Public Buildings Impact Fees associated with the construction of Eighty five (85) affordable rental housing units in a housing development to be known as Banyan Court.

In exchange for the acceptance of this Certificate and the receipt of the aforementioned credits from the County towards the payment of impact fees associated with Banyan Court, the Developer expressly agrees to comply with, and to perform, all of the terms contained in the below enumerated Conditions of Issuance.

Furthermore, in exchange for the receipt of the aforementioned credit from the County towards the payment of impact fees associated with Banyan Court, the Developer also agrees to execute and deliver to the County a Declaration of Restrictions for Developer Affordable Rental Housing Units, attached hereto and made a part hereof, and to comply with the terms contained therein.

This Certificate, if not used for the purposes set forth herein, shall expire one (1) year from the date of funding approval for the Banyan Court project by the Palm Beach County Board of County Commissioners, that is, on December 5, 2018.

PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

By: Melissa McKinlay
Melissa McKinlay, Mayor

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Dept. of Housing and Economic Sustainability

By: James Brako
James Brako
Assistant County Attorney

By: Sherry Howard
Sherry Howard, Deputy Director

CONDITIONS OF ISSUANCE

1. Organization Status: Developer is a Florida Limited Partnership duly organized and validly existing in good standing under the laws of the State of Florida with full power and authority to consummate the transactions contemplated herein.

2. Housing To Be Constructed: At the time of issuance of this Certificate to the Developer, the Developer has represented to the County that the Developer owns that certain real property (hereinafter "Property") located in Palm Beach County, Florida, as more particularly described in Attachment 1 to Exhibit A, attached hereto and made a part hereof. The Developer shall construct no fewer than Eighty five (85) rental housing units on the Property, together with ancillary improvements, all of which shall be known as Banyan Court (hereinafter "Project"). All aforesaid rental housing units shall be "Affordable Rental Housing Units" affected by these Conditions of Issuance and the Declaration of Restrictions referenced herein. Each of the aforesaid Affordable Rental Housing Units shall be the unit tenant's home under the limits of a signed lease document. None of the Affordable Rental Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.

3. Declaration of Restrictions: The Developer shall, in exchange for the receipt of this Certificate deliver to the County a fully executed Declaration of Restrictions for Developer Affordable Rental Housing Units, attached hereto and made a part hereof, as Exhibit A, and shall comply with the terms contained therein.

4. Building Permits: Developer shall obtain all building permits for the construction of the Project from the building department with jurisdiction over the Project within one (1) year after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, no later than December 5, 2018.

5. Certificates of Occupancy and Initial Lease: Developer shall obtain certificates of occupancy from the building department with jurisdiction over the Project for all Affordable Rental Housing Units at the Project and initially lease all such units within four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, no later than December 5, 2021.

6. Affordability of Rental Housing Units: Developer shall, for a period of twenty (20) years from the date of execution of the Declaration of Restrictions, lease each of the aforesaid Eighty five (85) Affordable Rental Housing Units to a household whose gross income, adjusted for family size, is no more than one hundred and forty percent (140%) of Area Median Income (hereinafter "AMI") at the time the unit is first occupied, and thereafter, at any time a new tenant occupies the unit. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.

Developer shall, for the aforesaid twenty (20) year period, lease each of the aforesaid Affordable Rental Housing Units at an affordable rental rate such that the sum of the actual monthly rent paid by the tenant of Affordable Rental Housing Unit plus the cost of tenant paid utilities does not exceed the rent limit for households at one hundred and forty percent (140%) of AMI as shown for Palm Beach County in the Income Limits and Rent Limits chart published by the Florida Housing Finance Corporation from time to time for its Multifamily Rental Programs -- Except HOME and SHIP and fixed according to the number of bedrooms. Tenant paid utilities including gas, water/sewer, electric, and garbage shall be based on the current utility allowances from the Energy Consumption Model approved by the Florida Housing Finance Corporation. (Should publication of the Multifamily Rental Programs -- Except HOME and SHIP or the Energy Consumption Model be discontinued, then the County shall designate an alternative source of information, provided, however, that if Florida Housing Finance Corporation approves a replacement utility allowance model, then the Declarant shall be permitted to use the new Florida Housing Finance Corporation approved model).

The above rental rate requirement shall apply to all initial leases with tenants, as well as all subsequent leases and lease renewals.

7. Records to be Maintained by Developer: Developer shall, for each tenant that is leased any of the Affordable Rental Housing Units at the Project, maintain a file that, at a minimum, contains the following:

- An application-for-lease, signed and dated by the applicant(s), identifying the household members that intend to occupy the unit and their household characteristics, and the household income they have disclosed.
- Documentation evidencing the Developer's verification of the applicant's household income and a computation sheet demonstrating the Developer's determination of the applicant's income eligibility to occupy the unit. Household income computation shall follow the HUD Section 8 method (24 CFR 5.609).
- A copy of the AMI showing the HUD income levels in effect at the time the initial lease is signed.
- A computation sheet demonstrating that in every initial lease, every subsequent lease, and every lease renewal, the rent is at an Affordable Rental Rate as defined herein.
- An original of each executed lease with the applicant/tenant identifying the apartment number and the rental rate. Developer shall utilize leases which require parents to be held legally and financially liable for the acts of their children in the apartment complex and which allow management to terminate the lease of any household where a household member is engaged in illegal or criminal activity or where a household member is engaged in anti-social behavior which denies the project's residents or area residents the quiet and peaceful enjoyment of their homes or businesses.
- Should the Developer elect to utilize criminal background information in the screening of prospective tenants or the retention/termination of tenants, the Developer must develop and implement tenant selection policies which comply with HUD guidance on the use of criminal background information.

Tenant selection/retention/termination shall not:

- (i) Exclude persons from housing based on records of arrests not resulting in conviction;
- (ii) Exclude persons from housing based solely on conviction of any type, with the exception of those identified by HUD (methamphetamine production and registered sex offender); and
- (iii) Be utilized to intentionally discriminate against protected classes of persons.

Tenant selection/retention/termination shall:

- (i) Serve a substantial, legitimate, and non-discriminatory interest of the housing provider;
- (ii) Distinguish between criminal conduct which indicates a demonstrable risk to resident safety and/or property and that which does not;
- (iii) Consider the nature, severity, and recency of the criminal offense;
- (iv) Consider relevant individualized evidence such as: circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; tenant history before and/or after the criminal conduct; and rehabilitation efforts; and
- (v) Be applied equally among all classes of protected persons.

- Any other documentation evidencing the Developer's compliance with these Conditions of Issuance and the requirements of the Declaration of Restrictions for Developer Affordable Rental Housing Units.

8. Right to Audit and Access to Records: Developer shall maintain ongoing records related to each tenant at the Project, and shall maintain all tenant records for at least five (5) years after the end of each tenancy. The County shall have the option, but not the obligation, to verify the Developer's compliance with these Conditions of Issuance and the requirements of the Declaration of Restrictions for Developer Affordable Rental Housing Units. The County may inspect or audit all tenant and owner records necessary to determine compliance with the requirements of the Declaration, and the Developer shall provide the County access to such books, records, and documents as required in this Section for the purpose of inspection or audit during normal business hours at the Developer's place of business.

Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Developer, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

9. Public Records: Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Developer: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Developer shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Developer is specifically required to:

- Keep and maintain public records required by the County to perform services as provided in this Certificate.
- Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Developer further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if the Developer does not transfer the records to the public agency.
- Upon completion of the requirements set forth in this Certificate the Developer shall transfer, at no cost to the County, all public records in possession of the Developer unless notified by the County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Developer transfers all public records to the County upon completion of the requirements set forth in this Certificate, the Developer shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Developer keeps and maintains public records upon completion of the requirements set forth in this Certificate, the Developer shall meet all applicable requirements for retaining public records. All records stored electronically by the Developer must be provided to the County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County, at no cost to the County.

Failure of the Developer to comply with the requirements of this article shall be a material breach of this Certificate. The County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. The Developer acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CERTIFICATE, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 NORTH OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT (561) 355-6680.

10. Certification and Reporting Requirements: Developer shall within thirty (30) days of each anniversary date of the Declaration of Restrictions for Developer Affordable Rental Housing Units, provide the County an annual report in the form of an affidavit executed by a person authorized to bind the Developer. Each such affidavit shall contain the following:

- A certification that the Developer is in compliance with the requirements of the Declaration of Restrictions for Developer Affordable Rental Housing Units and the Certificate for the Project.
- Evidence of having obtained all building permits for the project from the building department with jurisdiction over the Project within one (1) year after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners. (The Developer may discontinue submission of these items after this requirement has been met.)
- Evidence of having completed construction of all Affordable Rental Housing Units at the Project and obtained their certificates of occupancy from the building department with jurisdiction over the Project and evidence that all such units have been initially occupied by households as specified herein within four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners. (The Developer may discontinue submission of these items after this requirement has been met.)
- A certification listing all Affordable Rental Housing Units at the Project by unit number and bedroom size. This certification shall for each such unit include the lease date, the tenant's annual household income, the number of unit occupants, and the monthly rent amount for each unit.

Developer shall submit the Annual Report to:

Department of Housing and Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

11. Non-Discrimination: The Developer warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

Furthermore, Developer shall not discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property, nor shall any person on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of the terms contained herein.

12. Exclusion of Third Party Beneficiaries: No provision herein is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party named herein, including but not limited to any citizen or employees of the County and/or the Developer.

13. Advertising: During the period of the construction of the Project, the County shall have the right to install and maintain on the Property one or more signs identifying the County, or to be identified on such signs installed by others, as one of the entities participating in the development of the project. Sign or signs will be provided by the County and erected at Developer's expense.

14. Governing Law: The laws of the State of Florida shall govern the interpretation and enforcement of the terms contained herein and the venue shall be in Palm Beach County.

EXHIBIT A

Return to:

Palm Beach County
Department of Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, Florida 33406
Prepared by: James Brako,
Assistant County Attorney

**DECLARATION OF RESTRICTIONS
FOR DEVELOPER AFFORDABLE RENTAL HOUSING UNITS**

The undersigned, BDG BANYAN COURT, LP, a Florida limited partnership, having its principal office at 501 N. Magnolia Avenue, Orlando, FL 32801, (hereinafter referred to as "Declarant", which term as used in every instance herein shall include Declarant's successors and assigns), for the property described below, in consideration for the receipt of a Certificate of Award for Developer Affordable Rental Housing Units (the "Certificate"), dated _____, under Palm Beach County's Impact Fee Affordable Housing Assistance Program (hereinafter referred to as "IFAHAP") and the receipt of a credit valued at Fourteen Thousand Four Hundred Ninety Five dollars and 90/100 Dollars (\$14,495.90) towards the payment of public buildings impact fees as provided by Palm Beach County a political subdivision of the State of Florida (the "County"), does hereby grant to the County the following restrictions against the subject property, hereinafter referred to as the Property, which is more fully described in Attachment 1 attached hereto and made a part hereof.

1. The restrictions contained in this Declaration of Restrictions for Developer Affordable Rental Housing Units (the "Declaration") shall be deemed a covenant running with the land and are binding upon the undersigned, their heirs, executors, successors, and assigns. These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and/or those persons to whom such authority is formally delegated, and executed with the same formalities as this document.

2. In consideration for the receipt of the Certificate and its associated credit of \$14,495.90 towards the payment of Public Buildings Impact Fees, the Declarant hereby covenants and agrees as follows:

- (a) To comply with the Conditions of Issuance contained in the Certificate referenced herein.
- (b) To construct no fewer than Eighty five (85) rental housing units on the Property, together with ancillary improvements, all of which shall be known as Banyan Court (the "Project"). All aforesaid rental housing units shall be "Affordable Rental Housing Units" affected by the restrictions and conditions of this Declaration, and by those contained in the Certificate referenced herein. Each of the aforesaid Affordable Rental Housing Units shall be the unit tenant's home under the limits of a signed lease document. None of the Affordable Rental Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.
- (c) For a period of twenty (20) years from the date hereof (the "Compliance Period"), the Declarant agrees:
 - (i) To obtain all building permits for the construction of the Project from the building department with jurisdiction over the Project no later than December 5, 2018.
 - (ii) To obtain certificates of occupancy from the building department with jurisdiction over the Project for all Affordable Rental Housing Units at the Project and initially lease all such units no later than December 5, 2021.

- (iii) To then lease each of the aforesaid Eighty five (85) Affordable Rental Housing Units to a household whose gross incomes, adjusted for family size, is no more than one hundred and forty percent (140%) of Area Median Income (hereinafter "AMI") at the time the unit is first occupied, and thereafter, at any time a new tenant occupies the unit. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.
- (iv) To lease each of the herein described Affordable Rental Housing Units at an affordable rental rate such that the sum of the actual monthly rent paid by the tenant of Affordable Rental Housing Unit plus the cost of tenant paid utilities does not exceed the rent limit for households at one hundred and forty percent (140%) of AMI as shown for Palm Beach County in the Income Limits and Rent Limits chart published by the Florida Housing Finance Corporation from time to time for its Multifamily Rental Programs -- Except HOME and SHIP and fixed according to the number of bedrooms. Tenant paid utilities including gas, water/sewer, electric, and garbage shall be based on the current utility allowances from the Energy Consumption Model approved by the Florida Housing Finance Corporation. (Should publication of the Multifamily Rental Programs -- Except HOME and SHIP or the Energy Consumption Model be discontinued, then the County shall designate an alternative source of information, provided, however, that if Florida Housing Finance Corporation approves a replacement utility allowance model, then the Declarant shall be permitted to use the new Florida Housing Finance Corporation approved model).

The above rental rate requirement shall apply to all initial leases with tenants, as well as all subsequent leases and lease renewals.

- (d) To submit annual reports to the County as outlined in the Certificate detailing the Declarant's compliance with the terms of the Certificate and this Declaration.
- (e) To maintain its records as provided for in the Certificate.
- (f) Not to discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property.
- (g) Provided the Declarant is not in default of any provisions hereunder, this Declaration shall automatically terminate twenty (20) years from the date hereof.

3. Declarant has secured a loan to construct the Project in an amount up to \$11,200,000 from Valley National Bank, or its successors (the "First Mortgage Holder"), which loan has been secured by a separate mortgage encumbering the Property (the "First Mortgage"). Declarant has also secured a separate SAIL Program loan in an amount up to \$5,400,000 from the Florida Housing Finance Corporation for the completion of Banyan Court which loan shall be secured by a separate mortgage encumbering the Property (the "Second Mortgage") and has secured a separate Extremely Low Income Gap loan in an amount up to \$600,000 from the Florida Housing Finance Corporation for the completion of Banyan Court which loan shall be secured by a separate mortgage encumbering the Property (the "Third Mortgage"). The lien created by this Declaration shall be senior to all other liens, encumbrances, and mortgages on the Property except the lien created by the First Mortgage, the Second Mortgage, the Third Mortgage and except any other liens expressly recognized by the County in writing.

4. The Declarant shall pay, or cause to be paid, all taxes due while the Property is in its possession, and the Declarant shall not voluntarily create, or permit or suffer to be created or to exist, on or against the Property, or any part of thereof, any lien superior to the lien of this Declaration except for the lien created by the First Mortgage, and except for any other liens expressly recognized by the County in writing. The Declarant shall keep and maintain the Property free from the claims of all parties supplying labor or materials unto the same. The Declarant agrees to notify the County of any liens, judgments or pending foreclosure on the Property within ten (10) working days of the receipt of said notice by Declarant.

5. Should Declarant change the use or planned use, or discontinue use, of the Property (including the beneficiaries of such use) from affordable rental housing, or should the Declarant sell, convey or transfer title to the Property prior to the end of the Compliance Period, then the Declarant shall pay the County an amount equal to the IFAHAP Repayment Amount as defined herein.

In the event of any proposed sale, conveyance or transfer of the Property prior to the end of the Compliance Period, the Declarant must obtain approval of the County which approval shall not be unreasonably withheld. Any approved sale or conveyance of the Property by the Declarant will be contingent upon the receipt of the payment by the County in accordance with the above provisions, or the receipt of a commitment, executed by a subsequent owner acceptable to the County, confirming its acceptance of the restrictions and conditions provided herein for the duration of this Declaration.

Notwithstanding the foregoing, the restrictions set forth herein shall run with the land whether or not such commitment is obtained from a subsequent owner.

6. The Declarant acknowledges and covenants that the Declarant's failure to perform any covenant, agreement, term, or condition contained herein, or in the Certificate referenced herein, shall constitute a default under this Declaration. The Declarant further acknowledges and covenants that a default under the First Mortgage, under any senior mortgage to this Declaration, or under any subordinate mortgage to this Declaration, shall constitute a default under this Declaration.

In the event of default, before the County shall pursue any of its rights or remedies under this Declaration, the County shall first give the Declarant written notice of the default complained of which such notice shall be given to the Declarant at their address shown herein. The Declarant shall then have thirty (30) calendar days from the date such notice is given to cure or correct any such default to the County's satisfaction, provided if the default cannot be cured within such time, Declarant shall have additional time to cure as necessary so long as Declarant is diligently pursuing such cure.

If the Declarant fails, neglects, or refuses to perform any of the provisions, terms and conditions set forth herein, or in the Certificate, or fails to cure any breach of this Declaration or the Certificate within the period set forth above after the County provides notice to the Declarant as set forth above, the County may at any time thereafter, with or without notice or demand and without limiting any other right or remedy which the County may have hereunder or under the law by reason of such default or breach, elect to exercise any one of the following remedies:

- (a) Declare due from Declarant immediately upon demand an amount equal to the IFAHAP Repayment Amount as defined herein.
- (b) Declare due from Declarant immediately upon demand a penalty of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per Affordable Rental Housing Unit per quarter where such default exists which penalty shall accrue from the date the default commenced. The Declarant shall pay said amount within ten (10) calendar days after the thirty (30) calendar day cure period specified above, and then on the first day of each quarter thereafter.

If the Declarant shall fail to pay any of the above amounts, the County shall have the right to file in a court of competent jurisdiction an action for collection of due and unpaid amounts and penalties which the Declarant is obligated to pay hereunder.

Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Declarant of its determination that the Declarant is in default of the terms of this Declaration, and upon the Declarant's failure to cure the default to the County's satisfaction, the County may, from time to time, cure each default under any covenant so curable in this Declaration, or in any instrument creating a lien upon the Property, or any part thereof, to such extent that the County determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Declarant to the County in addition to the legal rate of interest from the time of expenditure and shall constitute a lien against the property. The County shall provide the First Mortgage Holder thirty (30) calendar days notice before the County cures any default.

In addition to any remedy set forth herein, the County shall have such other remedies as are available at law or equity. The exercise or attempted exercise by the County of any right or remedy available under this Declaration shall not preclude the County from exercising any other right or remedy so available, nor shall any such exercise or attempted exercise constitute or be construed as an election of remedies. The Declarant shall pay any reasonable expenses, including reasonable attorney's fees and costs incurred by the County, under this Declaration and the preparation and delivery of notices required hereunder. The failure or omission by the County to enforce any of its rights or remedies upon breach of any of the covenants, terms or conditions of this Declaration shall not bar or breach any of the County's rights or remedies on any subsequent default. The County shall provide the First Mortgage Holder thirty (30) calendar days notice before the County exercises any remedy under this provision.

7. The IFAHAP Repayment Amount shall be calculated as the sum of the amount secured by the Declaration plus three percent (3%) of the amount secured by the Declaration plus \$1,500.

Upon receipt of the IFAHAP Repayment Amount by the County, the County shall issue the Declarant a release of restrictions removing the lien of this Declaration from the property.

8. All notices from the Declarant to the County and the County to the Declarant, and as otherwise required or permitted by any provision of this Declaration shall be in writing and sent by registered or certified mail and addressed as follows:

- To County:

Board of County Commissioners
c/o Palm Beach County Attorney's Office
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401
- To Declarant:

BDG BANYAN COURT, LP
501 N. Magnolia Avenue
Orlando, FL 32801
Attention: Scott Zimmerman
Phone: 407-447-1780 ext 2001
Email: szimmerman@agpmanager.com
- With copy to:

Wincopin Circle LLLP
c/o Enterprise Community Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044
Phone: (410) 964-0552
Email: sshack@enterprisecommunity.com

Such addresses may be changed by each party by written notice to the other parties.

9. Notwithstanding anything to the contrary set forth in this Declaration evidencing or securing the County's provision of \$14,495.90 to the Declarant, the County agrees to the default provisions set forth below.

The County will give Wincopin Circle LLLP, together with its successors and assigns, (the "Investor Member") a copy of any written notice of any default it gives to the Declarant under this Declaration, at the address shown above.

The County will give the Investor Member ten (10) business days after the Investor Member's receipt of such notice to cure a non-payment of any sum due under this Declaration.

The County will give the Investor Member thirty (30) days after the Investor Member's receipt of such notice to cure any other default under this Declaration.

If a default is incapable of being cured within thirty (30) days, the County will give the Investor Member such additional time as is reasonably necessary to cure such default provided it has commenced to cure such default within thirty (30) days and diligently proceeds to cure such default.

If the Investor Member makes any such payment or otherwise cures such default, the County will accept such action as curing the respective default under this Declaration.

10. The Declarant shall cause this Declaration to be recorded in the Public Records of Palm Beach County, Florida, and thereafter the Declarant shall deliver this Declaration to the Director of the Department of Economic Sustainability, at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.

Executed this ____ day of _____, 20__.

Signed, sealed and delivered
in the presence of:

Witnesses:

BDG BANYAN COURT, LP
a Florida limited partnership,

Witness Signature

By: BDG BANYAN COURT GP, LLC
a Florida limited liability company,
its General Partner

Print Witness Name

By: _____
Louis E. Vogt, Manager

Witness Signature

Print Witness Name

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Louis E. Vogt, as Manager of BDG BANYAN COURT GP, LLC, the General Partner of BDG BANYAN COURT, LP, who is personally known to me, or who has produced _____ as identification and who did/did not take an oath.

Signature: _____

Notary Name: _____
Notary Public - State of Florida

(NOTARY SEAL ABOVE)

ATTACHMENT 1
LEGAL DESCRIPTION OF THE PROPERTY

A portion of Lot 1, all of Lots 2, 3 and 4, and a portion of Lot 5, Block 33, SAWYER'S SUBDIVISION OF THE WEST HALF OF SECTION 21, TOWNSHIP 44 SOUTH, RANGE 43 EAST, according to the plat thereof, as recorded in Plat Book 5, Page 12, Public Records of Palm Beach County, Florida, being more particularly described as follows:

Beginning at the northwest corner of said Lot 5; thence N. 89°46'00" E. along the North line of Lots 1-5, a distance of 449.82 feet; thence along a curve to the right, as described in Official Record Book 2223, Page 1884, Palm Beach County Public Records, having a radius of 45.00 feet, a central angle of 90°14'00", for an arc length of 70.87 feet; thence S. 00°00'00" W. along a line parallel with and 5.00 feet West of the East line of Lot 1, being the West right of way line of North A Street as described in Official Record Book 2201, Page 1027, Palm Beach County, Public Records, a distance of 333.67 feet to a compound curve to the right, as described in Deed Book 395, Page 408, Palm Beach County Public Records, having a radius of 49.50 feet, a central angle of 32°04'51", a chord bearing of S. 42°00'57" W., a chord length of 27.36 feet, an arc length of 27.72 feet; thence N. 89°38'50"W. along the South line of Lots 1-4, a distance of 376.69 feet to the southwest corner of Lot 4; thence N.00°00'00"E. along the West line of Lot 4, a distance of 125.00 feet; thence N. 90°00'00" W. along the North line of the South 125 feet of Lot 5, a distance of 100.00 feet to the West line of Lot 5; thence N. 00°00'00" E. along the West line of Lot 5, a distance of 269.22 feet to the Point of Beginning.

Containing 183,302 square feet or 4.208 acres.